U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAR 23 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Grand Cayman, British West Indies, and he is a former lawful permanent resident of the United States (U.S.). The record reflects that in January 2000, the applicant was detained by Immigration and Naturalization Service officers, as an alien who was inadmissible due to the commission of crimes involving a controlled substance. The record reflects further that on January 24, 2000, the applicant withdrew his application for admission before an immigration judge and that he subsequently departed the United States. The applicant presently seeks permission to reapply for admission into the United States (U.S.) after deportation or removal.

The director found that the applicant was inadmissible to the U.S. pursuant to section 212(a)(9)(A)(ii) as an alien previously ordered removed. The director subsequently determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the application for permission to reapply for admission into the United States (Form I-212 application) accordingly.

On appeal, the applicant asserts that he is rehabilitated and that he has not used drugs or committed any crimes since 1991. The applicant asserts further that he lived in the U.S. for most of his life as a lawful permanent resident, and that he has significant ties to the United States. The applicant also asserts that his fiancée is a U.S. citizen and that they would like to marry and possibly live in the United States.

Section 212(a)(9)(A) of the Act states in pertinent part:

> (A) Certain aliens previously removed.-
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> . . .
>
> (ii) Other aliens.-Any alien not described in clause (i) who-
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> (I) has been ordered removed under section 240 or any other provision of law, or
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> (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
>
> (iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, (Secretary)] has consented to the alien's reapplying for admission.

The AAO notes that, although removal proceedings were initiated against the applicant in January of 2000, the final outcome of the proceedings was the withdrawal of the applicant's application for admission. The immigration judge did not order the applicant deported or removed, and the record contains no evidence to indicate that the applicant was ordered deported or removed on any other occasion. Accordingly, the AAO finds that the director's determination that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A) of the Act was erroneous. The AAO finds further that the applicant's Form I-212, application is moot because the applicant was not ordered removed or deported and was therefore not required to apply for permission to reapply for readmission after deportation or removal.

In spite of the above findings, however, the AAO finds that the applicant is permanently inadmissible to the United States pursuant to section 212(a)(2) of the Act.

Section 212(a)(2) of the Act states in pertinent part:

> (2) Criminal and related grounds. —
>
> (A) Conviction of certain crimes. –
>
> (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
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> . . .
>
> (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

> The Attorney General [Secretary] may, in his discretion, waive the application of . . . subparagraph [2] (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

The record reflects that between 1987 and 1991, the applicant was arrested and convicted in Florida on three occasions for felony possession of cocaine, in violation of Title 21 U.S.C. §246. The simple possession of marihuana exception set forth in section 212(h) of the Act clearly does not apply to the applicant's convictions. Moreover, the AAO finds that no other waivers of inadmissibility are available to the applicant.

A review of the documentation in the record reflects that although the Form I-212 application is moot in the present case, the applicant is nevertheless statutorily inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed.